

Application Number: 10/029,766

Docket Number: 200302293-1

**REMARKS**

Upon entry of this Response, claims 1, 4-9, and 11-16, and 18-20 and 27-28 remain pending in the present patent application. Claims 1, 9, 16, and 27 have been amended. Applicants request reconsideration of the pending claims in view of the following remarks.

As an initial matter, it is noted that the expiration of the 1 month date is on October 2, 2005 which falls on a Sunday. Consequently, this Response is timely filed on Monday, October 3, 2005 with a one month extension.

In item 2 of the Office Action, claims 1, 4, 6, 7, 9, 11, 13, 15-18, 20-23 and 26 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication 2002/0073304 A1 filed by Marsh et al. (hereinafter "*Marsh*"), in view of U.S. Patent 6,516,346 issued to Asco et al. (hereinafter "*Asco*"), and further in view of U.S. Patent 6,742,025 issued to Jennery et al. (hereinafter "*Jennery*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rilckaert, 9 F.3d 1531, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). Claims 17, 21-23, and 26 have been previously canceled, thereby rendering this grounds of rejection moot with respect to such claims. In view of amendments presented herein, Applicants respectfully request that the rejection of claims 1, 4, 6, 7, 9, 11, 13, 15, 16, 18, and 20 be withdrawn.

To begin, claim 1 provides as follows:

1. A computer system, comprising:
  - a central processor unit (CPU);
  - a programmable read only memory (ROM) coupled to said CPU, said ROM containing a digital image;
  - wherein said CPU programs its ROM during a system initialization without execution of an operating system associated with the CPU, wherein the system initialization further comprises a booting of said system;
  - a connection to a network and wherein, during the system initialization, said system sends a message to a server coupled to the network to determine whether an upgraded image is available for said ROM; and
  - wherein, during the system initialization, said system receives an upgraded image and flashes said ROM with the upgraded image if the upgraded image is available for said ROM.

In this regard, claim 1 specifies that the CPU programs its ROM during a system initialization without execution of an operating system associated with the

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CPU. Neither *Marsh*, nor *Jennery* show or suggest at least this feature. Specifically, *Marsh* discusses execution of an application after startup of a CPU in which the operating system is executed. The update application executed is executed on top of the operating systems as is the case with other applications as described by *Marsh* (see *Marsh*, Paragraph [0047]). In addition, *Jennery* discusses loading of an operating system that is executed in order to facilitate an update of ROM (see *Jennery*, column 10, lines 43-56).

Accordingly, Applicants request that the rejection of claim 1 be withdrawn. In addition, Applicants request that the rejection of claims 4, 6, and 7 be withdrawn as depending from claim 1. In addition, Applicants request that the rejection of claims 9 and 16 be withdrawn to the extent that claims 9 and 16 have been amended herein to incorporate subject matter similar in scope with that of claim 1. Also, Applicants request that the rejection of claims 11, 13, 15, 18, and 20 be withdrawn as depending from either claim 9 or claim 16.

Next, in item 17 of the Office Action, claims 5, 12, 19, 24, and 25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Marsh*, *Asco* and *Jennery* as applied to claim 1, and further in view of U.S. Patent 6,594,757 issued to Martinez (hereafter "*Martinez*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP 2143.03, *In re Rijckaert*, 9 F.3d 1531, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). Applicants respectfully request that the rejection of claims 5, 12, and 19 be withdrawn as ultimately depending from either claim 1 or claim 9 as amended for the reasons described above with respect to such claims. In addition, Applicants note that claims 24 and 25 have been canceled herein, thereby rendering this ground for rejection moot with respect to such claims.

In addition, in item 23 of the Office Action claims 8 and 14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Marsh*, *Asco*, and *Jennery* as applied to claim 1, and further in view of U.S. Patent 6,009,524 issued to Olarig et al. (hereafter "*Olarig*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP 2143.03, *In re Rijckaert*, 9 F.3d 1531, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). Applicants respectfully request that the rejection of claims 8 and 14 be withdrawn as depending from claims 1 and 9 for the reasons described above with reference to claims 1 and 9.

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Also, Applicants request that the rejection of claim 27 be withdrawn to the extent that claim 27 as amended incorporates subject matter similar in scope with that of claim 1 above for at least the reasons described with respect to claim 1.

Applicants request that the rejection of claim 28 be withdrawn as depending from claim 1 for the reasons described above with respect to claim 1.

### **CONCLUSION**

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,



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